

## References

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*Exploited, Undervalued – and Essential: Domestic Workers and the Realisation of their Rights*. Edited by Darcy du Toit. Pretoria: Pretoria University Law Press, 2013. 380 pp. ZAR225.00, \$22 paperback, available online.

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Starting points matter. The University of Western Cape's Social Law Project's recent, insightful volume could easily be missed by those concerned about the future of labor law as a general field. After all, the book focuses on one of the most marginalized groups of workers, resolutely situated in labor law's peripheries: domestic workers performing historical "care" work. And, the book emerges out of a historically "marginalized" continent, albeit in the African member of the BRICS, South Africa. Yet Emeritus Professor Darcy du Toit's edited volume centers and contributes meaningfully to core debates on the direction of labor law, nationally and internationally because, I would argue, it takes peripheries as starting points.

The volume considers the potential of the International Labor Organization (ILO)'s alternative vision to the Washington consensus: that is, decent work as a manifestation of social justice in the global economy. It does so within a state constitutional framework that is "historically self-conscious" (p. 45) and that has social transformation from an *apartheid*-based to a democratic society as its fundamental purpose. For Du Toit, the adoption by the ILO in 2011 of the Decent Work for Domestic Workers Convention, 2011 (No. 189) and Recommendation, 2011 (No. 201) is "a milestone in that it settled the long-standing debate as to whether domestic work should be considered as 'work' for purposes of labor legislation" (p. 2). For South Africa, which has a staggering 8.7 percent of its population working in this sector (p. 1), rethinking the regulation of domestic work through principles like equality, freedom and development is hardly peripheral. It is intimately wedded to contemporary labor law's renewal.

Drawing on the substantive equality framework in the international instruments (domestic work is both work like no other and work like any other) (ILO 2010), Du Toit and his colleagues build on the “intuition” (p. 47) that South Africa, which has ratified Convention No. 189 along with 16 other states, has been more proactive than most on the regulation of domestic work. Most contributors modestly understate the extent to which that intuition is accurate: while a majority of countries worldwide have barely turned their attention to regulating domestic work progressively, South Africa has specific regulations on conditions of employment that were a model for the ILO; it also has specific regulatory mechanisms that are accessible to domestic workers and offer conciliation, mediation, and arbitration on termination of employment. Labor inspectors occasionally conduct blitzes in the homes of domestic employers to assess compliance. Yet Social Law Project members are careful to question the perception that South Africa is somehow exemplary, by demonstrating that concretely, little has changed for domestic workers despite 20 years of significant legislative reform. In particular, Pahmidzai Bamu offers a detailed analysis of the extent of non-compliance with the specific legislative framework establishing domestic workers in Chapter 5. And as Kitty Malherbe carefully canvasses with great technical precision in Chapter 4, domestic workers lack many forms of social security protection. The situation is even more bleak for migrant domestic workers from neighboring countries, as presented by Jennifer Fish, who advocates a move from border control to regional mobility rights through the harmonization of immigration and labor law (Chapter 6). Profound challenges to collective organizing for empowerment are assessed in historical and contemporary context by Nandi Vanqa-Mgijima, Yvette Wiid, and Darcy du Toit in Chapter 7.

Both to engage the specific challenge of regulating domestic work, and to insert their work into broader labor governance debates, the authors employ the framework of transformative constitutionalism, or fundamental social change through law and litigation that is backed by popular mobilization. Distinct from legal liberalism, transformative constitutionalism also sharply contrasts with decades of extraconstitutional political struggle to uproot *apartheid*. And the contributors acknowledge that the premise that transformation can occur through law, even collective bargaining law meant to foster workers’ collective autonomy, is tragically called into question by South African events like the 2012 Marikana massacre. Recognizing that law is hardly the primary driver of social transformation, Wessel le Roux nevertheless explores the South African commitment to an interlegality that “locates legal meaning in the contested space between legal texts at different levels of the global order” (p. 35). In this spirit, contributors consider whether

the international standards on decent work for domestic workers can be marshaled to yield effective implementation of domestic workers' basic rights, providing "the impetus for a deeper understanding of the link between the 'social' and the 'democratic' in the ideal of social democracy" (p. 35).

This book answers these hard questions in context, situating domestic workers' historical exclusion alongside neoliberal unraveling of the standard employment relationship. Contributors at once recognize the specificity of domestic work, but also characterize its so-called "uniqueness" in relative rather than absolute terms. The study moves beyond restating the perceived mismatch between traditional labor regulatory frameworks and the model of individual employment epitomized by the domestic work relationship, to consider what responsive regulation might look like in a nonstandard sector whose concerns lie both within and beyond the workplace. Du Toit and his team ultimately argue that "all workers may need an alternative model of regulation" (p. 350). They offer a crucial starting point for that broader discussion.

These are major accomplishments. But what seems implicit in this volume is that until the entrenched, racialized embodiment of the domestic work relationship as captured in the dispossessed worker herself, is transformed, the domestic work relationship in South Africa will remain not only a relic of its settler colonial past, but also structurally, part of its spatial perpetuation through rather than despite democratic statecraft. The South African state's ability to transform the structure of domestic work is no small measure of its ability to meet the daunting magnitude of this persisting "citizenship at work" challenge.

That potent theme might have been eclipsed by the authors' starting point in international standard-setting. My own intuition is that had the theme become an explicit starting point of this volume, the authors might have been less inclined to accept that the basis of domestic work's character as work like no other lies in its particular form of "intimacy" (when the "wife" in a gender based "labor of love" analysis is the comparator) as abstracted from a persisting, *ressentiment* breeding "invisibility," in which the black domestic servant *cum* worker is still expected to know and maintain a particular place and kind of "subordination" in the household of her Master, be that master black or white, and whether she lives in or out. Domestic work still incarnates not only the temporally oppressed worker (boundariless time) but also the spatially dispossessed subaltern in post-apartheid society (Coulthard 2014). It is no wonder that workers, although now recognized by national and international law as possessing agency, might still negotiate from a position of deep inequality in the shadow of the law. This helps to explain why they might *also* resist being acted on behalf of and indeed ultimately

upon by a benevolent, protective, democratic state, (Ally 2009) which purports to give them rights without broader social transformation. In other words, perhaps the regulatory misfit lies at least partly elsewhere. This volume has the virtue of forcing the reader to grapple with the relationship between historically laden social status, affirmations of rights, and broader emancipatory claims in any counter-hegemonic project purporting to write labor law into the future.

This book is a pleasure to read in part because it is so clearly the work of a team of researchers that has been engaged in rigorous, constructive dialogue, and rooted social action. The chapters build convincingly on each other, and the book constitutes a satisfying whole. I recommend it enthusiastically to anyone concerned with the future of labor law, and intent on reimagining it from the bottom up.

## References

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*Constitutions in Authoritarian Regimes*. Edited by Tom Ginsburg and Alberto Simpser. Cambridge: Cambridge University Press, 2013. 278 pp. \$95.00 cloth, \$34.99 paper.

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What shape do constitutions take in authoritarian regimes, when governmental power is not limited? Can even “sham” constitutions generate state legitimacy? If so, how? These related questions guide Ginsburg and Simpser’s edited volume, *Constitutions in Authoritarian Regimes*. This book begins with a concise introduction in which the editors explain why constitutions matter and what they do for authoritarian rulers. Specifically, constitutions solve “problems of